



The Comptroller General  
of the United States

Washington, D.C. 20548

Hutchinson

## Decision

Matter of: Tisdale Construction, Inc.  
File: B-231204  
Date: June 22, 1988

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### DIGEST

Where contracting officer refers nonresponsibility determination to the Small Business Administration (SBA), but protester fails to file for a certificate of competency, the General Accounting Office (GAO) will not review the contracting officer's determination since such a review would in effect substitute GAO for SBA.

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### DECISION

Tisdale Construction, Inc. protests the rejection of its bid under invitation for bids (IFB) No. F41612-88-B-0006, issued as a set-aside for small disadvantaged businesses by the Air Force to obtain military family housing maintenance for Sheppard Air Force Base, Texas. Tisdale, the apparent low bidder, argues that the Air Force improperly found it nonresponsive.

We dismiss the protest.

Due to severe time constraints, the contracting officer requested that the Defense Contract Administrative Services (DCAS) conduct simultaneous preaward surveys on the three apparent low bidders. DCAS began the preaward survey on Tisdale, the lowest of the three low bidders, but informed the contracting officer that, in relation to a similar procurement, Tisdale had recently been found nonresponsive based on a negative preaward survey involving the same technical and financial areas and was subsequently denied a certificate of competency (COC) by the Small Business Administration (SBA). On April 15, 1988, the contracting officer found Tisdale nonresponsive based on the above information. On the same day, the contracting officer notified SBA that a request for a COC was being forwarded for an expedited review due the time pressures involved.

On April 18, the SBA telephonically contacted the president of Tisdale to find out if the firm intended to file for a COC. The president of Tisdale indicated that the firm would

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apply for a COC and, on April 19, the SBA sent Tisdale the application materials, via certified mail, which indicated that those materials were due by close of business April 27, 8 days later. Tisdale failed to submit a completed application for a COC even though its president had signed the receipt for the application materials. On April 28, the day after the application deadline, SBA notified the Air Force of Tisdale's failure to apply for a COC and that the SBA considered the matter closed. The Air Force then proceeded to make award to the second lowest bidder, who had been found to be responsible.

In its letter of protest, Tisdale complains that the contracting officer found it nonresponsible, and referred the matter to SBA for a COC, prior to completion of the preaward survey. Tisdale also complains of what it characterizes as the "high handed way SBA rushed this action."

Under 15 U.S.C. § 637(b)(7) (1982), the SBA has conclusive authority to review a contracting officer's negative determination of responsibility and to determine a small business' responsibility by issuing or refusing to issue a COC. When a contracting agency finds that a small business is nonresponsible, the burden is on the firm to apply for a COC from the SBA in order to avail itself of the protection afforded against unreasonable determinations by the contracting officer. Zan Co., Inc., B-229705, Dec. 15, 1987, 87-2 CPD ¶ 598. Where, as here, the firm fails to apply for a COC, we will not undertake an independent review of a contracting officer's underlying nonresponsibility determination unless there is a showing that it may have stemmed from fraud or bad faith since such a review would in effect substitute our Office for the SBA, the agency authorized by statute to review such determinations. Kirk Bros. Mechanical Contractors, Inc., B-228603, Nov. 13, 1987, 87-2 CPD ¶ 479.

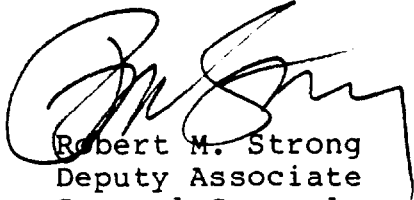
Since Tisdale has not applied for a COC and has not alleged fraud or bad faith, we will not review the Air Force's finding of nonresponsibility.<sup>1/</sup> Furthermore, SBA was justified in establishing an 8-day deadline for Tisdale to apply for a COC since SBA has only 15 working days, while award is

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<sup>1/</sup> After receiving the Air Force's report on its protest, Tisdale filed a request for additional documents with our Office on June 15. We need not address this request since we are dismissing the protest.

withheld, within which to process a COC request after notification of a contracting officer's nonresponsibility determination. See FAR § 19.602-2(a) (FAC 84-12); 13 C.F.R. § 125.5(d) (1988).

The protest is dismissed.



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